

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

| | | |
|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| FM Broadcast Auction |) | |
| Scheduled for January 10, 2007 |) | AU Docket No. 06-101 |
| (Auction No. 68) |) | |
| |) | |

To: The Wireless Telecommunications Bureau and the Media Bureau

COMMENTS OF NATIONAL PUBLIC RADIO, INC.

Introduction

National Public Radio, Inc. ("NPR") respectfully submits these Comments in response to the Public Notice, DA 06-997, dated August 24, 2006, proposing to auction certain FM broadcast construction permits and requesting comment on the proposed auction procedures. For the reasons set forth herein, NPR requests that the Bureaus modify its auction procedures, including public notices, to expressly invite noncommercial educational broadcast applicants to apply for any of the subject construction permits without having to submit minimum opening bids, upfront payments, or filing fees.

NPR is a non-profit membership organization of more than 800 noncommercial educational radio stations nationwide. NPR produces and distributes such noncommercial educational programming as *All Things Considered*, *Morning Edition*, *Talk Of The Nation*, and *Performance Today*. NPR

also operates the Public Radio Satellite Interconnection System and provides representation and membership services to its member stations.

**The Auction Procedures Are Required To Accommodate
Noncommercial Educational Station Applications**

Under the Commission's rules governing competitive bidding for FM and other broadcast spectrum, broadcast auctions are open to all applicants seeking to construct commercial and, if otherwise eligible, noncommercial educational ["NCE"] broadcast stations.¹ The rules further state that

initial and other public notices will contain information about the completion and submission of applications to participate in the broadcast auction, and applications for noncommercial educational broadcast stations, as described in 47 U.S.C. 397(6), on non-reserved channels, as well as any materials that must accompany the applications, and any filing fee that must accompany the applications or any upfront payments that will need to be submitted.²

Although NCE station applicants are exempt from, and therefore not permitted to participate in, the actual auctioning of non-reserved broadcast spectrum, an NCE applicant may obtain a construction permit for which there are no competing applications, in certain circumstances via settlement, or when the other mutually exclusive applications are all for NCE stations.³ The Commission recognized that such situations do occur, and it specifically sought to preserve opportunities for

¹ 47 C.F.R. § 73.5002(a).

² Id. (emphasis added).

³ Id. § 73.5002(a), (c); id. § 73.7001(b).

NCE applicants to obtain non-reserved spectrum without unduly delaying the competitive bidding process.⁴

Based on the foregoing, the Bureaus' initial public notice in the above-captioned proceeding is materially deficient in several ways. First, it contains no information about "the completion and submission of . . . applications for noncommercial educational broadcast stations." Second, the discussion of minimum opening bids, upfront payments, and filing fees ignores the fact that an NCE applicant need not pay any minimum opening bid, upfront payment, or filing fee because it is exempt from the actual auction⁵ and from filing fees.⁶

Third, and as a matter of Commission policy, the auction procedures should openly encourage the submission of NCE applications. The Commission's auction authority is not based exclusively on raising revenue for the Federal treasury.⁷ Rather, the Commission is required to promote the availability of new service and encourage the dissemination of broadcast licenses among a wide variety of applicants, among other non-economic goals.⁸ It is worth noting, in that regard, that the construction permits made available in Auction No. 68 are construction

⁴ In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants, Second Report and Order, 18 FCC Rcd. 6691, 6699-6700 (2003).

⁵ 47 C.F.R. § 73.5002(b).

⁶ Id. § 1.1114(c).

⁷ See 47 U.S.C. § 309(j)(3).

⁸ 47 U.S.C. § 309(j)(3)(A)-(B).

permits left over from 2 prior auctions,⁹ and we wonder whether encouraging NCE applications might result in new NCE service to areas where there apparently is no interest in providing commercial service.

In any event, the Commission's rules require public notice of the eligibility of NCE applicants to submit applications during an auction proceeding. The public notice in this proceeding does not comply with those requirements, and we urge the Bureaus to remedy this deficiency expeditiously.

⁹ See Public Notice, DA 06-997, at 1.

Conclusion

For the foregoing reasons, and as required under the Commission's rules, NPR urges the Bureaus to modify its auction procedures, including its public notices, to encourage noncommercial educational broadcast applications for any of the subject construction permits.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

Gregory A. Lewis /s/

Neal A. Jackson

Vice President for Legal Affairs

General Counsel and Secretary

Michael Riksen,

Vice President, Government Relations

Dana Davis Rehm

Vice President for Member and Program

Services

Michael Starling

Vice President, Chief Technology Officer

Gregory A. Lewis

Associate General Counsel

National Public Radio, Inc.

635 Massachusetts Avenue, N.W.

Washington, DC 20001

September 6, 2006